

Authority for Calculating State Economic Losses in Criminal Acts of Corruption in Indonesia

Hartati¹, Hafrida², Erwin³, Romi Arizyanto⁴, Beny Saputra⁵

¹ Universitas Jambi, Indonesia, Email: hartatifh@unja.ac.id

² Universitas Jambi, Indonesia, Email: hafrida_hukum@unja.ac.id

³ Universitas Jambi, Indonesia, Email: erwin@unja.ac.id

⁴ Universitas Jambi, Indonesia, Email: arizyanto.romy@yahoo.com

⁵ Global Business law and Regulation, Department of legal studies, Central European University (CEU), Vienna, Austria, Email: saputra_beny@phd.ceu.edu

Abstract

This article will analyze the elements and authority to calculate state economic losses to achieve justice for criminal acts of corruption in Indonesia. The research methodology employed is normative juridical, with a focus on literature reviews and relevant legislation. The research findings indicate that corruption is not only related to state financial losses but also to state economic losses. The regulation of elements of state economic losses and the authority to calculate state economic losses in Indonesia have not been regulated firmly and completely in laws and regulations so it will give rise to different interpretations from law enforcement officers. The unclear regulation of elements and authority in calculating state economic losses will result in different indicators for determining the value of calculating state economic losses which will result in different results of calculating state economic losses which can be detrimental the defendant because the calculation results exceed the unlawful acts he committed and can also detrimental the state if the calculation results are much lower than the state economic losses incurred.

Keywords: *Calculation; Criminal Act of Corruption; State Economic Losses;*

1. INTRODUCTION

Corruption is one of the criminal acts that is considered an extraordinary crime. It is appropriate to accept such an identification given that the corruption crime appears to not only cause financial losses for the state but also potentially cause significant economic losses for the entire region¹. Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Criminal Act of Corruption, states that: Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the finance or state economy (Article 2 paragraph (1)); Anyone to enriching oneself or another person or a corporation, abuses the authority, opportunity of facilities given to him related to his post or position, which creates losses to the states finance or state economy (Article 3).

1 Ifrani Ifrani, "Grey Area Antara Tindak Pidana Korupsi Dengan Tindak Pidana Perbankan," *Jurnal Konstitusi* 8, no. 6 (2016): 993, <https://doi.org/10.31078/jk866>.

The distinction between state financial losses and state economic losses indicates that the two terms have distinct meanings, which leads to a distinction in how state financial losses and state economic losses fulfil the elements of loss. The state economy is economic life which is structured as a joint effort based on the principle of kinship, or an independent community effort based on Government policy at both the central and regional levels, in accordance with the provisions of the applicable laws and regulations. aims to provide benefits, prosperity and prosperity to all people's lives².

The distinction between state financial losses and state economic losses indicates that the two terms have distinct meanings, which leads to a distinction in how state financial losses and state economic losses fulfil the elements of loss. The state economy is economic life which is structured as a joint effort based on the principle of kinship, or an independent community effort based on Government policy at both the central and regional levels, in accordance with the provisions of the applicable laws and regulations. aims to provide benefits, prosperity and prosperity to all people's lives³.

The definition of the country's economy is unclear, vague and not applicable for law enforcement, so it is difficult to find clear parameters or benchmarks regarding losses to the country's economy⁴. According to the Attorney General, ST. Burhanuddin, in *the Focus Group Discussion* activity held by the Deputy Attorney General for Special Crimes, on November 28th, 2023, stated that: "The explanation of the Law on Eradicating Criminal Acts of Corruption only describes the meaning of the country's economy at large, so that up to now this definition is still a broad concept *and* is certainly not applicable as a criminal instrument considering that norms in criminal law must be written (*lex scripta*), must be clear (*lex certa*), and must be interpreted firmly without any analogy (*lex stricta*)⁵.

The previously mentioned fact indicates that there is either a legal of state economic loss aspects in statutory regulations. In addition, Indonesian laws and regulations do not yet govern the authority holders who calculate the state's economic losses, which creates barriers to law enforcement attempts to fulfill the elements of state economic losses in criminal acts of corruption⁶.

Additionally, with regard to the pursuit of justice in law enforcement, the absence of regulations governing elements and authority for calculating economic losses to the nation affects the pursuit of justice in law enforcement, affecting not only the community as a whole but also defendants imposed in criminal acts of corruption. In order to better understand the issue mentioned above, the problem formulation will be the main focus, namely: What is the concept of regulating the elements of state economic losses in criminal acts of corruption in the future from the perspective of legal certainty? And

2 Herman Katimin, "Kerugian Keuangan Negara Atau Perekonomian Negara Dalam Menentukan Hukuman Mati Pada Tindak Pidana Korupsi," *Sasi* 26, no. 1 (2020): 39–51.

3 Hernol Ferry Makawimbang, *Memahami Dan Menghindari Perbuatan Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi Dan Pencucian Uang* (Penerbit Thafa Media bekerjasama dengan Pusat Studi dan Analisis Pencegahan ..., 2015).

4 Supriyanto, Supanto, and Hartiwiningsih, "Redefinisi Unsur 'Yang Dapat Merugikan Keuangan (Perekonomian) Negara' Dalam Tindak Pidana Korupsi," *Jurnal Amanna Gappa Fakultas Hukum Universitas Hassanudin* 25, no. 2 (2017): 7–18, <https://journal.unhas.ac.id/index.php/agjl/article/download/2507/1349/4615>.

5 Jurnalborneo.co.id, "ST Burhanuddin: Penerapan Unsur Perekonomian Negara Dalam Tindak Pidana Korupsi Merupakan Langkah Progresif Penegakan Hukum," *jurnalborneo.co.id*, 2023, <https://jurnalborneo.co.id/berita/st-burhanuddin-penerapan-unsur-perekonomian-negara-dalam-tindak-pidana-korupsi-merupakan-langkah-progresif-penegakan-hukum/>.

6 Antonius Despinola, "Regulating the Element of Harming the State Economy in Corruption Offenses in Indonesia," *International Journal of Multidisciplinary Research and Analysis* 07, no. 03 (2024): 1214–20, <https://doi.org/10.47191/ijmra/v7-i03-44>.

What is the construction of the regulatory authority to calculate state economic losses in criminal acts of corruption based on efforts to fulfill justice in government legal actions?

This research is a normative legal research that aims to find norms that can be used in determining the elements and authority holders in calculating state economic losses as an effort to realize justice in criminal acts of corruption in Indonesia. The approaches in this study consist of the statutory approach, case approach, historical approach, comparative approach, and conceptual approach. The legal materials used are primary legal materials and secondary legal materials collected through literature studies, which are then systematically arranged to be discussed and analyzed qualitatively and in descriptive form, in order to answer the problems discussed.

2. ANALYSIS AND DISCUSSION

2.1. Concept of Regulating Elements of State Economic Losses of Criminal Acts of Corruption in the Future from Perspective of Legal Certainty

In Indonesia, Pancasila is the foundation of everything the nation does and is used as an ideology for the Indonesian people. Pancasila is a reflection of cultural diversity and national customs within the unitary state of the Republic of Indonesia⁷. Pancasila is a fundamental norm which builds the legal norms under it in stages, so that the legal norms that exist under it must not conflict with higher legal norms, which is why the values contained in Pancasila will become the guidance, direction, values and principles that form the foundation for the formation of identity and character of national and state life in Indonesia⁸.

Furthermore, in relation to the principle of legal certainty in efforts to realize justice in law enforcement, Pancasila as the philosophical foundation of the nation and state in Indonesia has implicitly recognized and supported the principle of legal certainty in realizing justice⁹. The existence of the value of “Indonesian Unity”, which is positioned as the third principle of Pancasila, “Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives”, which is positioned as the fourth principle of Pancasila, and “Social justice for the whole of the people of Indonesia”, which is positioned as the fifth principle of Pancasila, is a form of reflection of legal certainty and the need for justice in various aspects of community life¹⁰.

The application of the concepts of legal certainty and justice necessitates tangible efforts in the development and enforcement of laws, even though Pancasila offers a philosophical foundation for legal certainty to realize justice. For a consequence, establishing a fair and democratic legal system in Indonesia requires putting into practice the concepts of justice and legal certainty that are consistent with Pancasila norms¹¹.

7 Moh Mahfud, *Politik Hukum Di Indonesia*, Jakarta: Rajawali Pres, 2009.

8 Vincentius Setyawan, “Pancasila As A Philosophical Basis Of Law Formation In Indonesia,” *NUSANTARA: Journal Of Law Studies* 2, no. 1 (2023): 1–8.

9 Dimas Sigit Tanugraha, “Pancasila Law Theory in Law Enforcement in Indonesia BT - Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)” (Atlantis Press, 2023), 1058–65, https://doi.org/10.2991/978-2-38476-164-7_98.

10 Ranny Rastati, “Internalizing Pancasila through Pop Culture and Youth Community,” *Jurnal Masyarakat Dan Budaya* 24, no. 2 (2022): 219–30, <https://doi.org/https://doi.org/10.55981/jmb.2022.1601>.

11 M Ellectrananda Anugerah Ash-shidiqqi and Aziz Zaelani, “The Morality of The Prosecutor (Pancasila Moral Relations Guarantee Law Enforcement in Political Determination),” *Indonesian Journal of Social Science Research* 5, no. 1 (2024): 30–37.

Based on the position of the principle of legal certainty which is in line with the values of Pancasila as described above, in the formation of laws and regulations relating to the state economy which are needed in order to provide legal certainty regarding the fulfillment of the element of state economic losses in criminal acts of corruption in Indonesia, it is mandatory to be based on the values of Pancasila which contain recognition of the principle of legal certainty.

In addition, the 1945 Constitution, which is based on the provisions of Articles 28C, 28D, 28G, 28I, 28J, and 33, provides a constitutional basis for formulating and compiling the scope as well as setting the content that is deemed important and relevant for regulating elements detrimental to the country's economy in criminal acts of corruption in Indonesia. This constitutional norm must be used as a constitutional basis in preparing the content of legal regulations related to fulfilling the elements detrimental to the country's economy in criminal acts of corruption.

Based on constitutional norms, the regulation of the state economy and the regulation of the fulfillment of elements detrimental to the state economy in criminal acts of corruption are the realization of the state's recognition of the fulfillment of justice in the form of recognition of human rights inherent in every person and are also a form of realization of the state's constitutional mandate to establish laws that specifically regulate the national economy. Furthermore, in order to provide legal certainty regarding the legal absence that regulates elements of loss to the state's economy in criminal acts of corruption, this can be done through the act of establishing statutory regulations, which are carried out in order to realize just legal certainty regarding the fulfillment of elements that are detrimental to the state's economy in This criminal act of corruption is carried out by forming new laws and regulations that have not yet been regulated and making changes to existing regulations¹².

The idea that is the point of this discussion is the formation of new legislation by forming a law that specifically regulates the State Economy. Previously there was Law Number 17 of 2003 concerning State Finance which specifically regulates the management of state finances, so a law on the State Economy is also needed, the content of which contains at least the following norms: Definition of the state economy; The scope of the state economy; Authority of the state economy management; State responsibility in state economy activities; The relationship between the state economy and the community economy; State economic supervision; and Criminal Provisions, Administrative Sanctions and Compensation. This is why revisions to the current legal framework are necessary, including adjustments to the following at the very least: Law Number 31 of 1999 as amended by Law Number 20 of 2001 on Eradication of the Criminal Act of Corruption; and Law Number 5 of 2011 on Public Accountants.

The amendments to the above law were carried out in order to provide additional special norms required in order to realize legal certainty in fulfilling elements detrimental to the country's economy, which include:

- a. Amendment to Law Number 31 of 1999 as amended by Law Number 20 of 2001 on Eradication of the Criminal Act of Corruption, namely carried out in the form of additional norms relating to:
 - 1) Definition of detrimental to the country's economy;

¹² Despinola, "Regulating the Element of Harming the State Economy in Corruption Offenses in Indonesia." *International Journal of Multidisciplinary Research and Analysis* 07, no. 03 (2024): 1214–20, <https://doi.org/10.47191/ijmra/v7-i03-44>.

- 2) The scope of calculating elements detrimental to the state economy;
 - 3) Requirements for actual or real losses for the state economy;
 - 4) Additional punishment for returning state economic losses.
- b. Amendment to Law Number 5 of 2011 on Public Accountants, specifically addressing the addition of insurance services provided by public accountants, their link to calculating state economic losses.

Additionally, it is recognized that the calculation of state economic losses is significantly more comprehensive than the calculation of accounting losses and financial losses in terms of the norming of elements detrimental to the state economy because it accounts for both tangible and intangible items that are determined by economic measures or indicators. In this position, the state economy refers to the value of all economic activities carried out in a country's territory within a certain period, for example one year, subsequently the calculation of the state economic losses will be carried out by calculating the losses arising from the impact of actions against the law which results in a decrease in the value of economic activities that occur in a country within a certain period of time. Therefore, the calculation of a state economic losses is measured by estimating losses arising from unlawful acts that affect the state economic activities within a certain period of time¹³.

Moreover, any economic activity that contributes to the creation of added value from the nation's gross domestic product (GDP) is considered relevant for estimating state economic losses. Determination of GDP in calculating of state economic losses will be adjusted to the form of illegal acts that affect the state's economic sectors, such as industry, agriculture, services, trade, investment, the environment and others¹⁴. Therefore, the focus of calculating state economic losses will be on calculating the decrease in the value of economic activities which take place in a country within a specific time frame as a result of illegal acts. These include indirect losses like weakened market confidence or detrimental effects on long-term economic stability, as well as direct losses like lost income or investment, environmental damage that can place a burden on the State in terms of its obligation to restore environmental damage. More precise calculations of the financial losses sustained can be achieved by comprehending and quantifying the effects of illegal activity.

In connection with the nature of actual loss in fulfilling elements detrimental to the state economy in criminal acts of corruption, actual loss in unlawful acts which result in a decrease in the value of economic activities that occur in a country¹⁵. If there has been an illegal act that lowers the value of economic activity taking place in the nation, then the true definition of the element detrimental to the state's economy has been fulfilled. It is not necessary to ascertain the precise nature of the factors that are damaging to the nation's economy to ascertain whether or not the state has to employ public funds to compensate for the economic repercussions created by the reduction in the value of economic activity¹⁶.

13 Arif Setiawan and Umar Ma'ruf, "Penerapan Unsur Dapat Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi," *Jurnal Hukum Khaira Ummah* 12, no. 3 (2017): 517–26.

14 J T Kildow and A McIlgorm, "The Importance of Estimating the Contribution of the Oceans to National Economies," *Marine Policy* 34, no. 3 (2010): 367–74, <https://doi.org/https://doi.org/10.1016/j.marpol.2009.08.006>.

15 Abiodun Elijah, "Effects of Corruption and Economic Reforms on Economic Growth and Development: Lessons from Nigeria," in *African Economic Conference*, 2007, 1–29.

16 Boris Begovic, "Corruption: Concepts, Types, Causes and Consequences," *Center for Liberal-Democratic Studies, Year III No 26* (2005): 1–7.

It is also important to realize that not all economic losses to the state are caused by unlawful acts. The state of a nation's economy can also be impacted by a wide range of other variables, including government policies, changes in global markets, and natural factors such as natural disasters¹⁷. Therefore, in evaluating the state economic losses in criminal act of corruption, it is important to consider the main indicators in the initial determination, namely the existence of unlawful acts which then have the impact of causing losses to the state economy.

In practice, it's possible, for instance, that some business actors have engaged in illegal activities that have damaged the environment and disrupted with people's ability to meet their basic needs because they have been discouraged from engaging in agricultural activities as a result. Is it accurate to say that the state cannot be seen to be negatively impacting its economy when it does not bear the costs of repairing the environmental damage that has been caused? Such a perspective is one of state financial losses, not losses to the state economy, if the perception of the true nature is based on whether the state incurs costs or funds that lead to losses for the state. According to this viewpoint, the author argues that the existence of state economic losses does not necessarily have to be preceded by state financial losses. It is very possible in determining the existence of the criminal act of corruption that the actions taken have not caused state financial losses but from these actions have caused state economic losses, because there has been a decline in the value of economic activities that have a negative impact on overall economic growth. The difference between state financial losses and state economic losses in this discussion must be made concrete in the form of norms in laws and regulations that regulate the fulfillment of the elements of economic losses in criminal acts of corruption.

In the perspective of Law 31/1999 and its amendment, Law 20/2001, the definition of corruption is explained in 13 articles. Based on these articles, corruption is formulated into 30 forms or types of corruption crimes. The 30 types/forms of corruption are basically grouped into: state losses; bribery; embezzlement in office; extortion; fraudulent acts; conflict of interest in procurement. Types of corruption relating to state financial losses are regulated in Article 2 of Law 20/2001 jo. Constitutional Court Decision No. 25/PUU-XIV/2016 which states that Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that harms the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least Rp200 million and a maximum of Rp1 billion. In the event that the crime of corruption is committed under certain circumstances, the death penalty may be imposed. then, Article 3 of Law 31/1999 jo. Constitutional Court Decision No. 25/PUU-XIV/2016 which states that every person who, with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position to the detriment of state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 year and a maximum of 20 years and or a fine of at least Rp50 million and a maximum of Rp1 billion. Based on this explanation, one of the elements that

¹⁷ Isaac Ehrlich and Richard A Posner, "An Economic Analysis of Legal Rulemaking," *The Journal of Legal Studies* 3, no. 1 (1974): 257-86.

must be met in revealing the occurrence of corruption is harming state finances or the state economy.

Data from Indonesia Corruption Watch (ICW) states that state losses due to corruption cases reached IDR 238.14 trillion over the past 10 years (2013-2022). ICW recorded this data based on corruption verdicts issued by the courts of first instance to cassation. The detailed data is as follows: Year 2013: Rp3.46 trillion, 2014: Rp10.69 trillion, 2015: IDR1.74 trillion, 2016: IDR3.08 trillion, 2017: Rp29.42 trillion, 2018: Rp9.29 trillion, 2019: Rp12 trillion, 2020: IDR56.74 trillion, 2021: IDR62.93 trillion, and 2022: IDR48.79 trillion¹⁸.

Corruption has a huge impact on the state and society. One of them is financial and economic losses. Such losses greatly affect the quality of public services. On the other hand, corrupt practices also make the rich richer, the poor poorer, because development programs do not affect the community; certain groups that avoid taxes by bribing reduce state revenues, so that budget allocations for social welfare, schools, hospitals or roads, for example, are not optimal. When the provision of these basic services is not realized, people will lose trust in the government or its leaders. The corruption is part of what is called the “inequality trap”. In short, the formula goes like this: inequality → low trust → corruption → more inequality¹⁹. Inequality breeds corruption because citizens see the system as disadvantaging them; it creates a sense of dependency among ordinary citizens and a sense of pessimism about the future, which in turn weakens the moral imperative to treat people honestly; and it distorts the main institution of justice in society, the courts, which are perceived by ordinary citizens as protecting them from criminals²⁰.

2.2. Construction of the Regulation of the Authority for Calculating State Economic Losses in Criminal Acts of Corruption

Professor Satjipto Rahardjo, one of Indonesian legal scholars, introduced the concept of “progressive law” as a response to concerns about the functioning of the legal system. He expressed apprehension that if the law fails to bring happiness to the people, those responsible for its enforcement should feel a sense of unease. The reason behind this concern was the way that the law is generally applied and implemented in Indonesia,

18 Aclc.kpk.go.id, “Korupsi Dan Kerugian Keuangan Negara Yang Ditimbulkannya,” aclc.kpk.go.id, 2024, <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20240229-korupsi-dan-kerugian-keuangan-negara-yang-ditimbulkannya>.

19 Paul Heywood, *Routledge Handbook of Political Corruption* (Routledge Abingdon, 2015).

20 Edward Glaeser, Jose Scheinkman, and Andrei Shleifer, “The Injustice of Inequality,” *Journal of Monetary Economics* 50, no. 1 (2003): 199–222, [https://doi.org/https://doi.org/10.1016/S0304-3932\(02\)00204-0](https://doi.org/https://doi.org/10.1016/S0304-3932(02)00204-0). the operation of legal, political and regulatory institutions is subverted by the wealthy and the politically powerful for their own benefit. This subversion takes the form of corruption, intimidation, and other forms of influence. We present a model of such institutional subversion—focusing specifically on courts—and of the effects of inequality in economic and political resources on the magnitude of subversion. We then use the model to analyze the consequences of institutional subversion for the law and order environment in the country, as well as for capital accumulation and growth. We illustrate the model with historical evidence from Gilded Age United States and the transition economies of the 1990s. We also present some cross-country evidence consistent with the basic prediction of the model.”, “author”: [{“dropping-particle”: “”, “family”: “Glaeser”, “given”: “Edward”, “non-dropping-particle”: “”, “parse-names”: false, “suffix”: “”}], [{“dropping-particle”: “”, “family”: “Scheinkman”, “given”: “Jose”, “non-dropping-particle”: “”, “parse-names”: false, “suffix”: “”}], [{“dropping-particle”: “”, “family”: “Shleifer”, “given”: “Andrei”, “non-dropping-particle”: “”, “parse-names”: false, “suffix”: “”}], “container-title”: “Journal of Monetary Economics”, “id”: “ITEM-1”, “issue”: “1”, “issued”: [{“date-parts”: [[“2003”]]}], “page”: “199-222”, “title”: “The injustice of inequality”, “type”: “article-journal”, “volume”: “50”, “uris”: [“http://www.mendeley.com/documents/?uuid=d-92bce1c-60ec-4f3a-9614-22980ea90979”]], “mendeley”: {“formattedCitation”: “Edward Glaeser, Jose Scheinkman, and Andrei Shleifer, “The Injustice of Inequality,” <i>Journal of Monetary Economics</i> 50, no. 1 (2003

where justice is frequently subordinated to reason²¹. According to Satjipto Rahardjo, there are at least several assumptions that need to be considered in progressive law, namely: Laws are for humans, not the other way around. The presence of law is not for itself, but for something broader and greater. If problems occur in the legal field, then the law must be reviewed and corrected, not humans forced to be included in the legal scheme. Law is not an absolute and final institution but is in the process that is continuously becoming (*law as a process, law in the making*)²².

Based on the progressive law, philosophically, the construction of the regulation of the authority to calculate state economic losses in corruption crimes must be based on progressive law, namely by forming regulations that regulate the existence of authority inherent in authorized bodies or institutions. This is necessary so that law enforcement can be more responsive to existing social and economic dynamics as an effort to realize justice.

Having clear and firm authority arrangements for institutions or bodies responsible for calculating state economic losses is very important. This is necessary in order to provide a basis for the legality of the act of calculating state economic losses carried out by the institution or body. In addition, the presence of this authority regulation will help to clarify the legal system, ensuring that the pursuit of justice in law enforcement will be fulfilled. The necessary bodies or institutions will undoubtedly be able to carry out their tasks effectively and accountably with the availability of statutory regulations that clearly control the authority to audit the state economy. These regulations can then be employed in the framework of just law enforcement activities.

Furthermore, this effort to fill the legal absence relating to regulating the authority to calculate state economic losses is also in line with the legal characteristics of positivism. In the perspective of positivism there is no other law except the command of the ruler (*law is command from the lawgivers*), law is synonymous with legislation. The existence of laws ensures legal certainty, making execution simpler, and there would be no rules without laws²³.

However, although this effort to regulate the authority to calculate state economic losses is in line with the characteristics of positivist law, it is important to remember that this regulation needs to take into account the social context and the values of justice that develop in society. Even though positivism separates law from morals, in practice, the existence of regulations that are only formal without considering social justice can cause public dissatisfaction. Therefore, an approach that is sensitive to the social context is still needed so that law enforcement can be accepted and recognized by the public.

Furthermore, according to Article 1 paragraph (3) The 1945 Constitution stipulates that Indonesia is a state of law, which will therefore have a significant influence on the regulation of the authority to calculate state economic losses in criminal acts of corruption. The concept of the rule of law emphasizes that all state actions and policies must be based on law, which prioritizes justice, certainty and protection of human rights, which therefore demands a clear and transparent legal system in dealing with corruption problems as a form of recognition and application of the principle of legality, which requires that every legal action of the Government, whether in carrying out

21 Satjipto Rahardjo, *Membedah Hukum Progresif* (Penerbit Buku Kompas, 2006).

22 Rizal Mustansyir, "Landasan Filosofis Mazhab Hukum Progresif: Tinjauan Filsafat Ilmu," *Jurnal Filsafat* 18, no. 1 (2016): 15–25.

23 R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 1993).

regulatory functions or service functions, must be based on the authority granted by applicable laws and regulations, in this case written law.

Based on the characteristics of the principle of legality in a rule of law above, there is constitutional recognition and regulation that the State of Indonesia as a state of law requires legal certainty in the regulation of authority. In the context of calculating state economic losses, the institutions given authority must be clearly regulated in legislation, to ensure that all actions are taken in accordance with applicable legal provisions.

Furthermore, with regard to the regulation of bodies or institutions that are given the authority to calculate losses to the country's economy, based on the provisions of Article 23E of the 1945 Constitution, namely relating to the Audit Board of the Republic of Indonesia (BPK RI) defines an agency tasked with overseeing the administration and accountability of state finances. According to the Author, the BPK has the right to determine the state economic losses because the constitution recognizes the BPK RI existence and authority in relation to the examination²⁴.

Calculation of state economic losses is an important aspect in financial audits. With the ability to measure the economic impact of policies or programs implemented, the BPK RI will be able to provide more in-depth and strategic recommendations to the government. This not only highlights financial issues, but also provides a broader context regarding the social and economic impacts of the policies taken.

As an independent institution, the BPK RI has the legitimacy to conduct audits and calculate country economy losses caused by criminal acts of corruption. By developing an appropriate methodology, the BPK will be able to analyze various aspects of losses, including financial losses, long-term economic impacts, and social effects of criminal acts of corruption. In this position, collaboration and coordination between the BPK RI and law enforcement agencies such as the Indonesian Attorney, the Indonesian National Police and the Indonesian Corruption Eradication Commission are aimed at strengthening efforts to eradicate criminal acts of corruption. This helps with the calculation of economic losses to be included in the case documents supporting legal enforcement actions for criminal acts of corruption.

The follow-up to the regulation of the authority to calculate state economic losses to the BPK RI which can be used in law enforcement efforts for criminal acts of corruption, is carried out by means of legal action, which is carried out through: **Amendment to the Constitution or Amendment to Laws**, Considering that the agency or institution that is given additional authority in the context of calculating the country economic losses is aimed at the BPK, which is subject to constitutional regulation under the 1945 Constitution. Ideally, this additional authority would start with an amendment to the 1945 Constitution, namely relating to amendment to the provisions of Article 23E of the 1945 Constitution, which governs the authority of the BPK to carry out audits of the state economy in addition to auditing the management and accountability of state finances. However, considering that amending the 1945 Constitution is difficult to do while there is a need to provide a legal basis in accordance with the principles of a state based on law, the BPK's authority can be increased by amending the Law on the BPK.

Harmonization of Legislation. Harmonization of laws and regulations related to the calculation of state economic losses is an important step to ensure that the BPK's

24 M Thalib, Syamsir Syamsir, and Iswandi Iswandi, "Analisis Terhadap Kewenangan Badan Pemeriksa Keuangan Dalam Sistem Ketatanegaraan Indonesia Ditinjau Dari Peraturan Perundang-Undangan," *Limbago: Journal of Constitutional Law* 2, no. 1 (2022): 35-52.

authority can function effectively and be integrated with existing regulations and will facilitate the collaboration process with other institutions. **Preparation of Financial Audit Agency Regulations.** Efforts to prepare BPK regulations This is related to technicalities and standardization in examining the state economy, including in relation to calculating state economic losses for law enforcement for criminal acts of corruption. **Strengthening BPK's Institutional Capacity.** The preparation of human resources capable of conducting state economy audits must come after the addition of BPK's authority. This takes place by following a prescribed procedure for recruiting auditors and providing them with training on how to calculate state economic losses.

3. CONCLUSION

The concept of regulating elements detrimental to the country's economy in criminal acts of corruption in the future from the perspective of just legal certainty, is carried out through : *First*, the formation of laws that regulate the country's economy and amendments to Law No. 31 of 1999 as amended by Law no. 20 of 2001, as well as changes to Law no. 5 of 2011. *Second*, with regard to the formation of the law on the State Economy, it must at least contain norms covering the definition of the state economy, the scope of the state economy, power over the management of the state economy, state responsibility in state economic activities, the relationship between the state economy and community economy, supervision of the state economy, and provisions for criminal acts, administrative sanctions, and compensation. *Third*, base on perspective of calculating state losses, that economic losses are broader than accounting losses and financial losses because they consider things that are physical and intangible identified from economic measures or indicators, using a macro perspective.

The concept of regulating state economic losses in criminal acts of corruption in the future from a legal certainty perspective is implemented through: *First*, the formation of laws governing the state economy and amendments to Law No. 31 of 1999 as amended by Law No. 20 of 2001, and amendments to Law No. 5 of 2011. *Second*, the formation of laws on the State Economy, which contain norms covering the definition of the state economy, the scope of the state economy, authority of the state economy management, the responsibility of the state in state economic activities, the relationship between the state economy and the community economy, supervision of the state economy, and criminal provisions, administrative sanctions, and compensation. *Third*, economic losses are broader than financial losses because they consider both tangible and intangible things that are identified from economic measures or indicators, using a macro perspective.

The construction of regulatory authority to calculate state economic losses in criminal acts of corruption is based on a philosophical for the application of positivist law which is based on the recognition of the principle of legality as the basis for authority over government actions. Additionally, the construction of the regulation of the authority to calculate state economic losses is based on a constitutional basis, namely based on the provisions of Article 1 paragraph (3), Article 28D paragraph (1), and Article 23E of the 1945 Constitution. The regulation of the authority to calculate state economic losses is carried out by granting the authority to calculate state economic losses to the BPK which will be followed up through amendments to the 1945 Constitution or changes to laws, harmonization of statutory regulations, drafting of BPK regulations, and institutional strengthening of the BPK's capacity.

REFERENCES

- Aclc.kpk.go.id. "Korupsi Dan Kerugian Keuangan Negara Yang Ditimbulkannya." aclc.kpk.go.id, 2024. <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20240229-korupsi-dan-kerugian-keuangan-negara-yang-ditimbulkannya>.
- Ash-shidiqqi, M Ellectrananda Anugerah, and Aziz Zaelani. "The Morality of The Prosecutor (Pancasila Moral Relations Guarantee Law Enforcement in Political Determination)." *Indonesian Journal of Social Science Research* 5, no. 1 (2024): 30–37.
- Begovic, Boris. "Corruption: Concepts, Types, Causes and Consequences." *Center for Liberal-Democratic Studies, Year III No 26* (2005): 1–7.
- Despinola, Antonius. "Regulating the Element of Harming the State Economy in Corruption Offenses in Indonesia." *International Journal of Multidisciplinary Research and Analysis* 07, no. 03 (2024): 1214–20. <https://doi.org/10.47191/ijmra/v7-i03-44>.
- Ehrlich, Isaac, and Richard A Posner. "An Economic Analysis of Legal Rulemaking." *The Journal of Legal Studies* 3, no. 1 (1974): 257–86.
- Elijah, Abiodun. "Effects of Corruption and Economic Reforms on Economic Growth and Development: Lessons from Nigeria." In *African Economic Conference*, 1–29, 2007.
- Glaeser, Edward, Jose Scheinkman, and Andrei Shleifer. "The Injustice of Inequality." *Journal of Monetary Economics* 50, no. 1 (2003): 199–222. [https://doi.org/https://doi.org/10.1016/S0304-3932\(02\)00204-0](https://doi.org/https://doi.org/10.1016/S0304-3932(02)00204-0).
- Heywood, Paul. *Routledge Handbook of Political Corruption*. Routledge Abingdon, 2015.
- Ifrani, Ifrani. "Grey Area Antara Tindak Pidana Korupsi Dengan Tindak Pidana Perbankan." *Jurnal Konstitusi* 8, no. 6 (2016): 993. <https://doi.org/10.31078/jk866>.
- Jurnalborneo.co.id. "ST Burhanuddin: Penerapan Unsur Perekonomian Negara Dalam Tindak Pidana Korupsi Merupakan Langkah Progresif Penegakan Hukum." jurnalborneo.co.id, 2023. <https://jurnalborneo.co.id/berita/st-burhanuddin-penerapan-unsur-perekonomian-negara-dalam-tindak-pidana-korupsi-merupakan-langkah-progresif-penegakan-hukum/>.
- Katimin, Herman. "Kerugian Keuangan Negara Atau Perekonomian Negara Dalam Menentukan Hukuman Mati Pada Tindak Pidana Korupsi." *Sasi* 26, no. 1 (2020): 39–51.
- Kildow, J T, and A McIlgorm. "The Importance of Estimating the Contribution of the Oceans to National Economies." *Marine Policy* 34, no. 3 (2010): 367–74. <https://doi.org/https://doi.org/10.1016/j.marpol.2009.08.006>.
- Mahfud, Moh. *Politik Hukum Di Indonesia*. Jakarta: Rajawali Pres, 2009.
- Makawimbang, Hernol Ferry. *Memahami Dan Menghindari Perbuatan Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi Dan Pencucian Uang*. Penerbit Thafa Media bekerjasama dengan Pusat Studi dan Analisis Pencegahan ...,

2015.

- Mustansyir, Rizal. "Landasan Filosofis Mazhab Hukum Progresif: Tinjauan Filsafat Ilmu." *Jurnal Filsafat* 18, no. 1 (2016): 15–25.
- Rahardjo, Satjipto. *Membedah Hukum Progresif*. Penerbit Buku Kompas, 2006.
- Rastati, Ranny. "Internalizing Pancasila through Pop Culture and Youth Community." *Jurnal Masyarakat Dan Budaya* 24, no. 2 (2022): 219–30. <https://doi.org/https://doi.org/10.55981/jmb.2022.1601>.
- Setiawan, Arif, and Umar Ma'ruf. "Penerapan Unsur Dapat Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi." *Jurnal Hukum Khaira Ummah* 12, no. 3 (2017): 517–26.
- Setyawan, Vincentius. "Pancasila As A Philosophical Basis Of Law Formation In Indonesia." *NUSANTARA: Journal Of Law Studies* 2, no. 1 (2023): 1–8.
- Soeroso, R. *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 1993.
- Supriyanto, Supanto, and Hartiwiningsih. "Redefinisi Unsur 'Yang Dapat Merugikan Keuangan (Perekonomian) Negara' Dalam Tindak Pidana Korupsi,." *Jurnal Amanna Gappa Fakultas Hukum Universitas Hassanuddin* 25, no. 2 (2017): 7–18. <https://journal.unhas.ac.id/index.php/agjl/article/download/2507/1349/4615>.
- Tanugraha, Dimas Sigit. "Pancasila Law Theory in Law Enforcement in Indonesia BT - Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)," 1058–65. Atlantis Press, 2023. https://doi.org/10.2991/978-2-38476-164-7_98.
- Thalib, M, Syamsir Syamsir, and Iswandi Iswandi. "Analisis Terhadap Kewenangan Badan Pemeriksa Keuangan Dalam Sistem Ketatanegaraan Indonesia Ditinjau Dari Peraturan Perundang-Undangan." *Limbago: Journal of Constitutional Law* 2, no. 1 (2022): 35–52.